No. 839

Office - Supreme Court, U.S.
FILED
MAR 6 1958
JOHN T. FEY, Clerk

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT

No. 12073

AL BIERMAN and WILLIAM MILLER,
Plaintiffs-Appellees,

vs.

SAMUEL MARCUS,
Defendant-Appellant and Cross Claimant-Appellant,

and

MILMAR ESTATE, INC., a corporation organized under the laws of the State of New Jersey,
Defendant-Appellee.

AL KEVELSON,
Defendant on Cross Claim-Appellee.

Civil Action (No. 1626-56)

On Appeal from Final Judgment of the United States District Court for the District of New Jersey

Sat Below: Modarelli, U.S.D.J.

APPELLANT'S SUPPLEMENTAL APPENDIX

MAURICE SCHAPIRA,
Attorney for and of Counsel with Defendant-Appellant, Samuel Marcus,
17 Academy Street,
Newark 2, New Jersey.

SAMUEL M. KOENIGSBERG,
WILLIAM ROSSMOORE,
60 Park Place,
Newark 2, New Jersey.

MAX LEICHTMAN,
60 East 42nd Street,
New York 17, New York,
Of Counsel.

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12

INDEX

	PAGE
Complaint Superior Court of New Jersey.....	1a
Order to Show Cause Superior Court of New Jersey..	7a
Excerpts from Court Testimony.....	10a
Excerpts from Court Hearing January 25th, 1954....	20a
Excerpts from Court Hearing August 11th-12th, 1954	21a
Excerpts from Court Hearing December 13th, 1954...	22a
Excerpts from Court Hearing April 23rd-24th, 1956..	24a
Excerpts from Deposition of William Miller.....	28a
Excerpts from Deposition of Robert J. Schwartz.....	31a
Excerpts from Deposition of Al Kevelson.....	38a
Excerpts from Deposition of Samuel Marcus.....	40a
Exhibit DME-58—(Check Stubs).....	47a

SUPPLEMENTAL APPENDIX

Complaint

(Filed—August 3, 1956)

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION—ESSEX COUNTY

DOCKET NO.

ABRAHAM LIEBERMAN,

Plaintiff,

vs.

MILMAR ESTATE, INC., a corporation of New Jersey, BILL MILLER'S RIVIERA, INC., a corporation of New Jersey and WILLIAM MILLER,

Defendants.

CIVIL ACTION

Plaintiff, Abraham Lieberman, who maintains a law office at 851 Boulevard East, Weehawken, Hudson County, New Jersey, says:

1. At all times herein mentioned he was and is a practicing lawyer and a member of the Bar of the State of New Jersey.

2. In 1948 the defendant, Milmar Estate, Inc., and the defendant Bill Miller's Riviera, Inc., by their respective agent, servant and employee engaged his professional services on an annual retainer basis, whereby he agreed to render professional services as a lawyer to the said corporate defendants, in consideration of their agreeing to pay him the sum of $5,000.00 annually.

3. Thereupon, he rendered professional services to the said corporate defendants during the years 1948, 1949, 1950, 1951, 1952 and 1953 and he performed such professional services as the said corporate defendants, from time to time during the said years, requested that he render.

4. Simultaneously therewith and at the time when the corporate defendants engaged the professional services of plaintiff in the manner aforesaid, defendant William Miller requested that plaintiff extend credit to the said corporate defendants and in consideration of plaintiff extending such credit, the defendant, William Miller, agreed to pay the aforesaid sum of $5,000.00 which would become due and payable to him annually under the aforementioned retainer agreement.

5. Thereupon and in accordance with the agreement with the defendant, William Miller, plaintiff extended credit to the said corporate defendants and plaintiff rendered professional services to the said corporate defendants during the years 1948, 1949, 1950, 1951, 1952 and 1953.

6. By reason of such performance and rendition of professional services by plaintiff during the years aforementioned, there became due and owing to plaintiff from the said corporate defendants and the said defendant, William Miller, the sum of $30,000.00 on account of which some of money plaintiff has received the payment of $800.00 in 1955 leaving a balance of $29,200.00 due and owing to him.

7. Plaintiff has demanded payment of the aforementioned sum of money but the said defendants have refused and failed to make payment thereof.

8. On April 26, 1956 plaintiff commenced a Civil Action in attachment in the Superior Court of New Jersey, Law Division, Docket Number L-7099-55 against all the defendants named herein alleging in the said Civil Action the

foregoing facts and seeking a judgment for the balance of the fees aforementioned. Such proceedings were had in the aforementioned Civil Action pending in the Superior Court of New Jersey, Law Division, so that on April 26, 1956 an Order was made directing the issuance of a Writ of Attachment against the rights and credits, money and effects, goods and chattels, and real estate belonging to all defendants and located in the State of New Jersey. Thereupon a Writ of Attachment was issued by the Clerk of the said Court, and the Sheriff of Bergen County levied upon certain funds due and owing to the said corporate defendant, Milmar Estate, Inc., then in the hands of one Walter G. Winne, Master, United States District Court and in the hands of Peoples Trust Company of Bergen County. Notice of the Writ of Attachment and the foregoing Levy was given to all the said defendants in accordance with the rules of Court. Thereafter the said defendants made application to the aforementioned Court for an Order to quash the said Writ of Attachment and the Levy made thereunder, and although on July 11, 1956 the said Court did enter an Order quashing and vacating the Writ of Attachment issued against the corporate defendants and the said Levy made thereunder, the Court denied the application of the said defendant, William Miller.

9. The defendant, William Miller, is not now a resident of the State of New Jersey. He resides and maintains a permanent residence at 812 Bracken Street, Las Vegas, Nevada. The defendant, William Miller, is a non-resident of the State of New Jersey and process cannot be served upon him within the State of New Jersey.

10. The records of the Office of the Department of State, Bureau of Corporations of the State of New Jersey disclose that the principal office of the defendant, Milmar Estate, Inc., and of the defendant, Bill Miller's Riviera,

Inc., both corporations of New Jersey, is located at the same address, Hudson Terrace, Fort Lee, New Jersey and that the corporate agent for said corporations is the defendant, William Miller. The foregoing principal office is no longer in existence and the said corporate agent does not reside in the State of New Jersey. According to the records of the said Department of State, these said corporations did not change the location of their principal office or name another corporate agent. The records of the Clerk of the Superior Court of New Jersey, Law Division, in the aforementioned attachment proceedings disclose that the Secretary of State of New Jersey was served with a copy of the Complaint and Notice of Attachment and Levy on behalf of the said corporate defendants in compliance with the Statutes of New Jersey R.S. 2A:15-26.

11. The defendant, Milmar Estate, Inc., has issued 1250 shares of its capital stock, this being the total amount of issued and outstanding stock. These shares of stock have been issued to one Samuel Marcus and endorsed in blank by him. 500 shares of the foregoing shares of stock so issued to Samuel Marcus and endorsed by him in blank, are, in fact, the property of the defendant, William Miller. The foregoing 500 shares of stock so belonging to the defendant, William Miller, are his only assets which presently can be found in the state of New Jersey.

12. In a certain Civil Action now pending in the United States District Court, for the District of New Jersey wherein the corporate defendant herein, Milmar Estate, Inc., and the individual defendant, William Miller, and others are parties, plaintiff appeared as a witness at the trial of the said Civil Action pending in the Federal Court and testified before the Hon. ALFRED E. MODARELLI. During the said trial and while he so testified therein, plaintiff produced and brought into Court certain papers and in-

struments including the certificates of stock covering the shares of stock belonging to the said defendant, William Miller, as aforesaid. These papers, instruments and certificates of stock are exhibits in evidence in the said Federal Court proceedings and are all now being held by the Clerk of the said Federal Court in the Office thereof located in the City of Newark, Essex County, New Jersey and although plaintiff produced such papers, instruments and certificates of stock, he is not able to recapture possession thereof.

13. On April 26, 1956 in the aforementioned attachment proceedings pending in the Superior Court of New Jersey, Law Division, an Order was entered directing the issuance of a Writ of Attachment against the rights and credits, money and effects, goods and chattels and real estate of the defendant, William Miller, located in this State. Plaintiff has been unable to locate any assets or property belonging to the defendant, William Miller, excepting however, the aforementioned shares of stock issued by the defendant, Milmar Estate Inc. A valid attachment or levy cannot be made against the said shares of stock so owned by the defendant, William Miller, in the manner provided under the provisions of New Jersey Statutes R.S. 14:8-39 because the said certificate of stock cannot be actually seized by the officers making the attachment or levy and the said shares of stock cannot readily be attached or levied upon by ordinary legal process as required under the laws and statutes of our state.

14. Plaintiff seeks the aid of this Court by injunction to enjoin the said defendants from surrendering and redeeming the aforementioned shares of stock owned by the defendant, William Miller, until final disposition and judicial determination of the attachment proceedings pending in the Superior Court of New Jersey, Law Division as aforementioned in accordance with such remedy pro-

vided under the laws of the State of New Jersey, R.S. 14:8-39 and R.S. 14:8-40.

15. Plaintiff is without an adequate remedy in the Superior Court of New Jersey, Law Division.

Therefore, plaintiff claims judgment as follows:

That the said defendants, Milmar Estate, Inc., Bill Miller's Riviera, Inc., and William Miller and their agents and servants may be enjoined from surrendering and redeeming the shares of stock being the property of the said defendant, William Miller and that the said defendant, William Miller, be further enjoined and restrained from negotiating, transferring, assigning his said shares of stock so held by him and that the said defendant, William Miller, may be further enjoined and restrained from, in any manner disposing of, selling, transferring, assigning his interest or any part thereof in the said shares of stock so owned by him.

SAMUEL H. BERLIN
Samuel H. Berlin
Attorney for Plaintiff

STATE OF NEW JERSEY }
COUNTY OF ESSEX } ss.:

ABRAHAM LIEBERMAN, being duly sworn according to law upon his oath, deposes and says:

1. I am the plaintiff herein and I am personally familiar with all the matters set forth in the Complaint to which this Affidavit is annexed.

2. All the facts stated in the said Complaint are true to the best of my knowledge and belief.

ABRAHAM LIEBERMAN
Abraham Lieberman

Sworn and subscribed to before
me this 30th day of July, 1956.

MARY HUFNAGEL
A Notary Public of N. J.

Order to Show Cause

(Filed—August 3, 1956)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION—ESSEX COUNTY
DOCKET NO.

ABRAHAM LIEBERMAN,

Plaintiff,

vs.

MILMAR ESTATE, INC., a corporation of New Jersey, *et als.*,

Defendants.

CIVIL ACTION

This matter being opened to the Court by Samuel H. Berlin, Attorney for the plaintiff, and the Court having considered the verified Complaint filed herein, from all of which it appears that plaintiff commenced a Civil Action in Attachment in the Superior Court of New Jersey, Law Division against the defendants named herein and that in said attachment proceedings an Order was made directing the issuance of a writ of Attachment against the rights and credits, money and effects, goods and chattels and real estate belonging to the defendant, William Miller, and that certain shares of stock issued by defendant, Milmar Estate, Inc., and belonging to the defendant, William Miller, are now being held by the Clerk of the United States District Court for the District of New Jersey in the office of said Clerk in the City of Newark, and that said shares of stock cannot validly and readily be attached or levied upon by ordinary legal process as re-

quired under the laws and statutes of our State and that defendant, William Miller, is a non-resident of the State of New Jersey and process cannot be served upon him within this state and good cause further appearing for the granting of this Order to Show Cause without notice;

It is on this 3rd day of August, 1956, ORDERED that the defendants show cause before this Court at the Hall of Record in Newark, N. J. New Jersey on Monday, the 13th day of August, 1956, at 10:00 o'clock in the forenoon or as soon thereafter as this matter can be heard why they and each of them should not be enjoined and restrained pending final hearing herein and the trial and final judgment herein, from surrendering, redeeming, negotiating, transferring, assigning and in any manner disposing of, selling, transferring and assigning all and any part of and interest in the shares of stock heretofore issued by the defendant, Milmar Estate, Inc., and belonging to the defendant William Miller, and it is further, which restraint shall expire within 10 days of the date hereof unless within such time the restraint order is extended by the Court,

ORDERED, that the defendants be and they are hereby restrained as aforesaid pending the argument and hearing on this Order to Show Cause, and it is further,

ORDERED, that the said defendants may apply to this Court for an Order to dissolve or modify the said restraint upon two days' notice to the plaintiff or his Attorney, and it is further,

ORDERED, that a copy of this Order to Show Cause and the verified Complaint filed herein, be mailed within one day from the date of this Order, by registered mail with postage prepaid, directed to the defendants, Milmar Estate, Inc., and Bill Miller's Riviera, Inc., in care of the Secretary of State of New Jersey, Trenton, New Jersey, and it is further,

Order to Show Cause

ORDERED, that a copy of this Order to Show Cause and the verified Complaint filed herein, be mailed within one day from the date of this Order, by registered mail with postage prepaid, directed to the defendant, William Miller, at his post-office address at 812 Bracken Street, Las Vegas, Nevada; and it is further,

ORDERED, that a copy of this Order to Show Cause and the verified Complaint filed herein be served upon the Clerk of the United States District Court, District of New Jersey at his office in Newark, New Jersey within one day from the date of this Order.

JOHN B. McGEEHAN,
J. S. C.

Excerpts from Court Testimony

ABRAHAM LIEBERMAN, called and sworn for the defendant Milmar Estate, testified as follows:

• • •

Cross examination by Mr. Grosman:

• • •

(commencing at 161-12)

The Witness: No, your Honor is entitled to it. I am not raising that question one bit. Your Honor should take more vacation than you probably take.

The Court: I'm not taking any vacation. My son is in the hospital and has been since January 4th.

The Witness: I'm sorry to hear it. Now, I am in this position. As I say, I came up specially as a witness in this case. I am not interested one way or the other. I thought I'd go back today or tomorrow. Of course, as it is now—

• • •

(commencing at 162-3)

The Witness: Oh, I will be gone until March.

Mr. Kesselhaut: It seems to me that the wishes of this witness so far as his pleasure visits, whether they be to Florida or the coast, should be unimportant to the Court, and they are certainly unimportant to us. And I think this witness should be amenable to the purposes of this Court, if necessary.

The Court: Particularly since he happens to be one of the key witnesses in this suit. I don't see how—

Mr. Grosman: Well, Judge, I don't want to embarrass the judge any more than I have to, although my relationship with him has not been very pleasant—

• • •

William Miller—Plaintiff—Cross

(commencing at 162-19)

The Court: I think Judge Lieberman, you are a responsible member of the bar, and you have been a member of the bench, and you realize how vital your testimony is in this case. It may be more vital than anybody else's. It is very unreasonable to ask anybody to excuse you just to go back to Florida. I am sure they will finish with you on the first day we resume. (163) And it's very unfortunate that this situation had to develop.

• • •

(commencing at 168-4)

The Witness: Does your Honor therefore say I should come back Wednesday morning?

The Court: I think you better, Judge, unless you make some other arrangements with the party that brought you here to suit your convenience. But, as I said before, you must realize that you are probably the most important witness in this case, or certainly one of them, and one of the key witnesses whose testimony may determine the issues in this case. And if it keeps you from Florida for a couple of days—much as I'd like to be there myself—you'll have to forego that pleasure. The rest is up to you and whoever brought you here.

• • •

WILLIAM MILLER, a plaintiff herein, called as a witness on his own behalf, having been duly sworn, testified as follows:

Cross examination by Mr. Grosman:

• • •

(commencing at 381-15)

The Court: Why don't you tell us that? How do we know that, taking over the management first and then an actual taking over of the club later? We don't know that, unless you tell us.

Let's start with '46 and see what he is driving at.

The Witness: May I add to that, your Honor?

The Court: Let's see, when did he take over management, according to you? April blank, 1946. It's a letter addressed to William Miller—

The Witness: The same letter as he did before.

The Court: —signed by William Miller, accepted by (382) Samuel Marcus. Let's get this straight. Who wrote this letter?

The Witness: Mr. Marcus.

The Court: I thought so. Go ahead. You are a great signer and he is a great letter writer.

Mr. Grosman: He gives you anything but money.

The Court: Is this his idea?

The Witness: This is the same identical typewriter—

The Court: I see that

• • •

(commencing at 382-17)

Q. Now Mr. Miller, you say that Marcus took over management in some form in April of '46? A. That's correct, as agent for his dummies. As agent.

Q. But he took over? A. He told me that he has no interest in this club when he took over, he is just helping these poor unfortunate people.

Q. Including yourself? A. Oh, yes. I wasn't there at the time.

Q. You were not there in April of 1946? (383) A. No. I went over to the Riviera. I took care of the Riviera.

William Miller—Plaintiff—Cross

Q. Please. After April, 1946, Marcus took over management, and you were not out, you were taking care of the Riviera? A. Of the Riviera.

Q. You are sure of that? A. I am positive.

• • •

(commencing at 387-15)

Q. Were you the president of the Mocambo Club on Monday, September 23, 1946? A. I may have been on record, but I had nothing to do with the club or its policies.

The Court: The answer is you really don't know, do you?

The Witness: I don't know, no.

• • •

(commencing at 390-1)

Q. Let me ask you this. Did you close the Riviera for a time in 1946 and go over to manage the Embassy Club? A. I don't remember.

Q. You don't. But you are sure that as of April, '46, you were out and Marcus was in charge? A. That's correct.

Q. I show you a letter on the stationery of the Embassy Club dated December 15, 1946. Read it, please, and tell me whether you wrote that letter, and that's your signature on it? Letter to Samuel Marcus. (Document handed to the witness.) A. Yes.

Q. You still say that subsequent to April of '46 you had nothing to do with the management of the Mocambo Club? A. I still say I had nothing to do with the management of the Embassy Club after April, 1946.

Q. Did you have any interest in it? A. None whatsoever.

Q. What is the meaning of that letter? A. It is another one of his letters that I voided on September 14, 1948. I wanted all these papers forgotten and given away.

• • •

By Mr. Grosman:

(392) Q. Now, Mr. Miller, as I recall you stated very emphatically that you didn't know a man named Black and don't know who he is? A. I said right now I don't remember a man named Black. I can't remember who he is.

Q. Do you remember what you said about Black in the testimony which you gave under oath before the Liquor Commission in New York? A. No, I do not.

Q. Wait a minute. On September 29, 1947, or October 3, 1947? A. I don't remember.

Q. All right. Let me read the question that was put to you and the answer that you gave then.

"Question: There is a charge here that you permitted a person named Philip Black to avail himself of the license. How long have you known Philip Black? And tell us the extent to which he was connected."

Do you remember that question? A. No, I do not.

Q. You gave this answer, "Because of the delay in building of the place, and my sickness, I needed some additional capital, so I applied—asked Philip Black—he was a very dear friend of mine—to loan me some money."

Do you still say you don't know—

• • •

(commencing at 393-4)

A. Yes. Now I know who Philip Black is. Ten years ago—I haven't seen the man. I had virus pneumonia, in the hospital, and this fellow was at the New Yorker Hotel, where I lived, and I used him to do everything, because I was in the hospital at the time. Now I know who Philip Black is. You refreshed my memory.

Q. Why did you tell us a little while ago that you never heard of that name. A. Because I just didn't remember Philip Black. The name meant nothing. I know more people than any man that you have ever met and I can't remember names to this day.

Q. But you testified in 1947, in September or October of '47, that he was a very dear friend of yours. A. He was, probably, in 1947 but I have had so many people that I meet, and I have so many friends, that I just didn't recall at this time.

Q. You were asked, "What business is Black in?" And you answered, "He is in the sportswear business, Treo Sportswear." A. Now I know. Anything you want to ask me about Philip Black, I will be glad to tell you.

The Court: Now you are well-refreshed about (394) Philip Black.

• • •

(commencing at 394-5)

Mr. Grosman: Now, if your Honor please, I think your Honor ought to take note of the fact that this man is deliberately committing perjury.

Mr. Brigadier: I object.

Mr. Grosman: Please. Let me finish and then you may say whatever you like.

It's all right for this man to get up here and say that he suffers lapses of memory, or his memory goes blank, but unless I confront him with something in documentary form, he will say anything he likes. Now, it is impossible that in 1947 this man could have testified under oath before the New York Liquor Authority that this man had loaned him money, and was a very dear friend of his, and testify here that he never heard of the name.

Mr. Brigadier: If your Honor please—

The Court: Just a minute, please. You know, I would be inclined to agree with you, but I have had a lot to do with people in the nightclub profession and the theatrical profession. They are very extravagant in their terms. A man can be a very dear friend whom they have met twice. You and I wouldn't talk that

way, because any dear friend of mine (395) I will remember till the day I close my eyes. But these lads do that. And you should hear how they talk about their women friends after they meet them at first time. You would think they knew them for a lifetime. Then when they get in trouble, the opinion changes completely of that girl.

But you should be very careful, sir, because there is a lot to what Judge Grosman says. It shouldn't be necessary for him—when you make a sworn statement before a hearing authority in New York that so and so "is a dear friend of mine" and eight years later you have got to be refreshed, and a lot of time has got to pass, and then you have got to be shown things, and then he comes back to you.

• • •

(commencing at 395-20)

The Court: I don't see what purpose he would have in not recalling him, because Mr. Black won't have much to do with the outcome of this case, I am sure.

• • •

(commencing at 396-12)

Mr. Grosman: I didn't ask you to adjudicate the case, I asked you to take note of the fact that this man, according to ordinary legal standards, as I understand them, deliberately committed perjury when he said that he never heard the name Black, he knows nothing about it, when, under oath, seven years later he says that he was a very dear friend of his and had loaned him money.

By Mr. Grosman:

Q. Now, how much money did he loan you? A. I don't remember.

Q. You don't remember. Did you pay him back or did you give him a note? A. I paid him back in full.

(397) Q. In cash? A. I don't know, cash or check, but I paid him back in full.

Q. Do you know where this man is now? A. I haven't seen Philip Black in three or four years.

Q. Now, this man, Philip Black, was he the kind of a person that you would meet as the Judge described? A. That's correct. I met him at the New Yorker Hotel.

Q. Just a casual acquaintance and he passed out of your memory? A. That's correct.

Q. May I ask you this. You were questioned before the Liquor Commission in New York and this question was put to you, "What business is Black in?

"Answer: He is in the sportswear business, Treo Sportswear.

"Question: Businessman?

Q. Answer: Businessman. And I asked him—he is a very personal friend of mine, knew him for years, and when I was building the place, he always felt that the place had a good chance to make good, and he always felt like coming in, and, of course, I kept him out."

Do you remember giving that testimony? A. If it is in the testimony, I said it.

Q. "I didn't need any money, but after this sickness, (398) and the long delay, I thought I needed some additional capital. Again, as a layman, I asked Philip to make me a loan, and for the loan, besides paying back the loan, which I fully intended to do, I felt I would give him a piece of the profit, but not to make him an officer, or in any way involved with the ABC Board, and we had made arrangements to do so. In fact, I had some kind of an agreement drawn up, which was never entered into, never signed, never entered into, because in the meantime *I had met Dave Parris.*"

* * *

William Miller—Plaintiff—Cross

(commencing at 398-20)

Q. You still say that Black was a casual acquaintance? A. I say that I met–

Q. (continuing) —the memory of his friendship has completely passed out of your memory until I read this to you? A. That's correct. And I take an oath on it.

(commencing at 399-18)

Mr. Grossman: My attention has been called to one question about the Embassy.

Q. I think you said that you turned that over, the stock of the Mocambo, to Marcus— A. I said—

Q. —lock, stock and barrel? A. I said Marcus, but again I was mistaken. I always talk of Marcus as my partner. But evidently I turned it over (400) to a couple of people he had interested or something.

• • •

(commencing at 400-13)

Q. Did any of these dummies that you speak of give you any money? A. Oh, yes, they did.

Q. Directly? A. Oh, sure.

Q. I see. Well, now, you say that you eventually turned over this club, the Embassy Club, which was at the time a paying, going concern, to Marcus, or his dummies; is that what you said? A. I didn't make that answer at all.

The Court: Strike out the "paying, going concern." The rest of the answer is true?

The Witness: Is correct, yes.

(401) Q. You turned over the Mocambo and the Embassy Club to Marcus? A. To him or his nominee.

Q. Well, now, was the Embassy Club on a paying basis at the time that you turned over— A. I don't know anything about the Embassy Club at that time. Mr. Marcus—

Excerpts from Court Hearing of August 11-12, 1954

The Court: No, at the time you turned it over.

The Witness: At the time I turned it over, I didn't know anything about it, because I had been away, your Honor, I had been at the Riviera.

• • •

(commencing at 401-16)

The Court: I know. How about when you turned over the management to him, in April of that year, was it paying then, do you know?

The Witness: Yes, it had a real good future, it looked like it was a hot club, what we call a hot club. People were coming and the crowds were coming.

By Mr. Grosman:

Q. And was it on a paying basis then? A. Yes, it was.

Q. And you say that you turned what over to Marcus (402) in April of '46; what did you turn over to him? A. The management.

Q. The management? A. Right.

Q. Did you retain the ownership, control, or the ownership of the Embassy Club? A. Yes, I did.

Q. Until when? A. Until this paper was signed. (Indicating.)

Mr. Brigadier: What is the date?

The Witness: I am sorry.

A. Till February 8, 1947.

• • •

(commencing at 404-22)

Q. Isn't it a fact that in December of '46 you again became active in the Embassy Club? A. I don't remember, Judge.

Q. You don't. Would you say that you did not become (405) active again in December of '46? A. I don't remember.

• • •

Excerpts from Hearing January 25, 1954

Page 5:

Mr. Brigadier: As I say, here we had the one affidavit of Mr. Marcus alone. That affidavit, incidentally, and a reply affidavit that Mr. Marcus has since filed, charged all of these people not only with conspiracy to defraud, but charge them, as I see it, in very clear language with having committed perjury, forgery and a number of other crimes.

This includes, incidentally, the member of the bar of the State of New Jersey.

Page 29:

Mr. Grosman: Now, if your Honor please, the thing that amazes me about Mr. Brigadier's argument is this: I can't understand how he stands up here and tries to make a point of the fact that this litigation has been going on since 1950. We are the ones who have been yelling, "Murder," so to speak, about how this litigation has dragged.

Now, he started this thing as a simple suit for interpleader wherein he said, "We don't know to whom we pay the money; we are in doubt; under the contract existing between our clients we are in doubt."

Now, they started in to take depositions, the deposition of Marcus. We served notice on them that we wanted to take the deposition of Miller. And, of course, we were stymied because we could not take the deposition of Miller until they got through with the deposition of Marcus.

Page 30:

After four hundred pages of testimony on deposition had been taken it became a weariness to the soul the way they were dragging this thing out, so I came in here on a motion, as you will remember, and I asked your Honor under the Rules to terminate this litigation. That was way back—

I don't know, a year ago or so. And, your Honor, they objected very vigorously—why, they hadn't even started. So your Honor said, "Well, I guess they have a right to go on and take these depositions to a conclusion."

Page 31:

Mr. Grosman: So that is the way the time has gone.

And so now he comes in and says, "Why, this litigation has been going on since December of 1950. Let's terminate it."

Excerpts from Court Hearing of August 11-12, 1954

Pages 38-39:

Mr. Grosman: • • • Now, they tell you about all these four or five years that have elapsed since the inception of this case. If you will look at the record of the case, Judge, it is they who have be in control of this thing ever since. Under the rules of the Federal Court whoever serves notice of the taking of depositions first has priority. They served notice a few days before we did and they have had a picnic with this thing ever since.

They examined Marcus. Up to this time we haven't even been up at bat. They have been up at bat since December 19, 1951, the first day when they examined Marcus. Now, they went on and examined him on December 19, 1951; December 26, '51. They then jump to February 13, '52 February 25, '52; February 26; March 18, '52; March 26, '52. And then the case drops dead.

Now, your Honor will remember that we tried to shorten this thing. We came in here on a motion, which is on file, and we asked you, we plead with your Honor to shorten this thing. And they fought us tooth and nail. No, they didn't want to have it shortened then. It suited their purpose. Now they are all through. The money has been paid on this condemnation proceeding, and they are greedy for this money, they would like to get hold of this money, which is quite understandable.

Excerpts from Court Hearing of December 13th, 1954

Pages 32, 33:

The Court: The one of the claimants wants to know, "Why can't I get justice in your Court; why can't I get my case tried; what do I have to do it to get it tried?" and not without good cause. What does a man have to do to get his case tried in the face of tactics such as have been used on both sides. And I frankly told this gentleman that his lawyer was just as much responsible for the delay as the defendant's lawyers are.

And I don't blame that man at all. How long does a person have to wait to get his case tried, with all these obstructionist tactics? You never agree on anything, except what day you are in here, then you will agree. Nobody has been the least bit cooperative in this case, to try it on its merits, whatever they might be, I might as well tell you, and I am sick and tired of obstructionist tactics. And I shall not tolerate them any longer. I am going to set it down for trial. That's exactly what I intend to do. I will give you sufficient time. But that man is right. His case is going to be tried. He says, "If I haven't got a case, I will lose it, and that's the end of it. If I have got a case, I want my money." And I don't think there is anything unreasonable about that gentleman's position at all. This is a typical example of what you can do with discovery proceedings to obstruct and delay justice as long as possible, to wear your adversary out.

• • •

Page 35:

Now, if you are not going to vacate the order, let us, at least, see the books, see what they did with the money.

Page 36:

Mr. Grosman: Of course, we claim that they paid that

money with the corporation's funds. And if Marcus owns all the stock of the corporation, except $20,000 worth, you have been, in effect, paying these debts with Marcus' own money.

Now, all we want is to have our accountants look at their books, and see what happened to the money they borrowed, the $60,000 they borrowed from the bank. I think that is a perfectly reasonable request and should be granted.

Page 37:

Mr. Grosman: Now, your Honor, it is a very significant fact in this maze of talk back and forth that should stand out and appeal to your Honor. Every time we ask these people for discovery, they throw every possible obstacle in our way.

Now, the heart of the new rules is to give us discovery in advance of the trial. What could we do with these people if we got them on the stand? We ask them a question and we can't check any of their answers. We can only do that if we have their answers in advance of the trial, just as they went after Marcus. Week after week, month after month, it was they who held up this case. I didn't hold it up. Check the records.

The Court: I didn't say you held it up. I told this man, who was on the other side, that his lawyer had as much to do with the delay as anybody else did. And you know I am a very frank man.

Page 38:

The Court: And I wanted him to know it, too. And I wanted him to know it wasn't my fault.

Mr. Grosman: All I want is to look at their books in advance of trial, see what they did with this $60,000. Now, we are entitled to that, under the rules. It is the heart of the new rules. If you don't give us that relief you are handicapping us and depriving us of the benefit of the rules.

Excerpts from Court Hearing of April 23, 24, 1956

Page 39:

Mr. Grosman: We wanted to try the case, but we want to go into this case properly prepared.

The Court: Well, my dear friend, if you are not properly prepared after four years, you never will be, any of you.

Mr. Grosman: I don't know why we should be placed in a position where, after these people have taken more than three years to prepare their case, suddenly we are obstructing. We are not obstructing anything.

The Court: Well, if you are not obstructing, you certainly haven't pushed it along. That goes for both sides.

Mr. Grosman: We haven't had an opportunity to prepare our case for trial, your Honor.

The Court: Well, I am setting it down for trial, which I have a right to do under the rules. I don't think anybody would criticize me, after waiting four years.

Excerpts from Court Hearing of April 23, 24, 1956

• • •

(commencing at 33-9)

Mr. Lieberman: If the Court please, may I say, first of all, sir, that I am not a party to this suit. Your Honor may remember originally counsel for the defendant included me as a party defendant and I appeared before your Honor, and your Honor dismissed the case as far as I was concerned, because I was an escrowee. So I am not a party to this suit.

I merely want to call to your Honor's attention something that is academic and I hope your Honor will agree with me. I appeared in this court as a witness. Counsel in this case—Mr. Chazin, Mr. Bridagier—had nothing.

They didn't know anything about this case, and didn't have a paper. It was the result of my efforts, sir, that they were able to get into this case and prepare their case properly, because they had nothing.

I came into this court, whether under subpoena or otherwise--I may have come into the trial voluntarily. (34) I think your Honor at that time stated that I was to come up from Florida. Your Honor remembers that.

Mr. Brigadier asked me for various papers, and I produced them, to use as evidence.

And as counsel in this case, the one who has the papers, and the one who produced them, I feel, your Honor, when the case is finished the papers should be returned to me. They belong rightfully to me.

If there is any question as between clients and myself, they have a remedy to get the papers from me. But I voluntarily produced them here, came in here into court as evidence, and I therefore feel, sir, that this is an improper provision. I am not a party to this suit, and I don't see how counsel expect your Honor to make an order of this kind, ordering the papers that I turned into this court as evidence, merely to be used as evidence to help the Court decide, and now say those papers should be turned over to the defendant.

The logical procedure—and your Honor, I can cite numerous cases stating that when papers are turned over by a witness, after disposition of the case they rightfully go back to the person who introduced those papers in evidence. If your Honor wants to hear those cases I will be glad to quote them. But I think it is purely academic. Your Honor knows that, having been a (35) member of the bar and sat on the bench all these years.

Mr. Schapira: Well, as far as I am concerned, your Honor, I would just like to supplement the Judge's remarks by merely stating that again your opinion merely

Excerpts from Court Hearing of April 23, 24, 1956

talks about certain papers that have been given to the Judge as escrow agent and certainly they wouldn't be entitled to any papers that were not immediately important to the issue—to the escrow—that was actually what Judge Lieberman's offices were used for, as an escrow agent.

Now, if there were other papers, other than the escrow, then I think those papers ought to be specifically set forth in detail, that they should be turned over. But not again an omnibus provision that all papers, all documents, be turned over. And I don't think they are entitled to anything that they don't have a right to.

Mr. Brigadier: If your Honor please, the whole action was brought to determine, as between Samuel Marcus on the one hand and Milmar and the others on the other, what the rights were with respect to this transaction. And part of the transaction was the escrow agreement.

It is true that Samuel Marcus tried to make Judge Lieberman a party to the action, that he violently opposed it—I took no position, you recall, at the time at all—and that he was not made a party to the action.

(36) But this simply adjudges, as it is elementary with respect to any judgment—you can only adjudge things as between parties to the proceedings.

So when this says that we are entitled to the papers in Lieberman's possession, Lieberman is required to turn it over to us, it is elementary that, of course, the judgment doesn't make him turn over the papers at all, he is not a party to the proceeding. But that is no reason why the judgment shouldn't still make the recital.

Mr. Brigadier: Now, I suggest, because I know what the basis of Mr. Lieberman's difficulty is right now, that he is going to claim that there is some money due to him for legal services. Why not let's talk about it frankly, Judge? And I would suggest that all we put in this clause, which would be all that he is entitled to, subject to any lien, if any, which he is entitled to with respect to such documents.

Excerpts from Court Hearing of April 23, 24, 1956

Mr. Lieberman: I will go a step further, if the Court please. If your Honor will agree with me—and as long as Mr. Brigadier brought it up, and I wasn't going to bring it up, and was certainly not going to question before this Court the question of my fees—I have asserted, if the Court please, there are fees due me of $29,200. And I have asserted a lien on these papers, and I feel rightfully so. And I think your Honor will do me a personal favor, as (37) a member of the bar and officer of this court, in view of my statement, to assert in this order of judgment that the sum of $29,200 be set aside until this is litigated for fees due me.

Under those circumstances, I would be satisfied. The papers don't interest me, as long as I know that that sum is set aside to be litigated. Because, your Honor, may I just say this, my opinion is that after this order of judgment is entered, and if no appeal is filed—I am just assuming, knowing the parties involved, and knowing that Mr. Miller is a non-resident of this state—that this corporation will be immediately dissolved and the moneys will be distributed, and I, who happen to be a rather important witness, and did an awful lot of work in this case, will be left hanging in the air, sir.

I merely want to call this to your Honor's attention. Your Honor will possibly wonder why I haven't spoken up prior to this. I knew the trial was pending, sir, and I didn't want them to place me in the position—and your Honor has seen the type of individuals involved here, saying that I am trying to shake them down before I testify. And I did nothing, relying upon a promise that I would receive my fees. I have made my demand, and now it has been refused, sir. And that is why I object to this and why I ask the Court to protect me, * * *

Excerpts from Deposition of William Miller on Oral Examination

Mr. Schapira: There is one thing I would like to observe, if your Honor please, not knowing too much about this case, and that is this.

Here are two stockholders in a corporation, admittedly at this point they are the holders of all the stock of the corporation. They bring a suit and they make their own corporation the defendant, and make Marcus a defendant.

Now, we had to come in and defend that suit and because we had to file compulsory counter-claims at that point.

As I unduerstand it, and they come in and admit that the corporation had no claim to the fund. Why should we bear the expenses of that?

(Talking about Marcus.)

After all, if we were entitled to it why did they bring the suit in the first place?

The Court: That's a good question, Mr. Schapira. I often thought of that myself during this trial.

Excerpts from Deposition of William Miller on Oral Examination

• • •

(commencing at 2-24)

Q. Now, did you ever live at the Hudson Terrace at Fort Lee, New Jersey? A. Yes, I did. That's the Riviera.

(3) Q. That's the Riviera? A. That's the Riviera, yes.

Q. When did you leave there? A. I can't tell you offhand. It must have been about—

Q. About. A. I imagine it must have been somewhere about '50, 1950, maybe '49. I don't know.

Q. Now, did you live on the premises? A. Yes, I lived at the Riviera.

Excerpts from Deposition of William Miller on Oral Examination

Q. And you stopped living there in 1950? A. I believe it was '50. I am not sure. I would have to look.

• • •

(commencing at 37-8)

A. • • • He resigned as an officer of the corporation, which he testified under oath that he did not, and we have a letter here proving that he resigned as an officer. And from that day on I had nothing to do with Sam Marcus, I had finally gotten him out of my hair. I was in a position to operate, either make a success or break the club. And that is the way I operated.

• • •

(commencing at 71-7)

Q. How? A. A number of times if I needed some money, or anything like that, he would go to the Public National Bank, and on his name, by signing his signature, they would give us some money, and he would put it into Milmar, and then loan it to me, if I needed it, to hold me over for a couple of weeks.

Q. Milmar loaned money to you—? A. Yes.

Q. —or to Bill Miller's Riviera? A. Bill Miller's—to me and then I'd put it in the Riviera.

Q. I see. Did you put up any security for that? A. No.

• • •

(commencing at 73-9)

Q. When is the last time you saw the books of Milmar Estates, Inc.? A. I never saw the books.

Q. At no time? A. At no time.

Q. Who had charge of the books of Milmar Estates, Inc.? A. Jacob Hoffman and my secretary.

• • •

Excerpts from Deposition of William Miller on Oral Examination

(commencing at 100-11)

Q. Well, was it more than a hundred shares? A. I don't know.

Q. Was it a thousand shares? A. I don't know.

Q. Now, on September 14, 1948, in view of the fact that you, as you say, left everything to your attorney, Judge Lieberman, you didn't read any of the documents prepared that day? A. No.

Q. You didn't participate in any of the discussions, except with Sam Marcus? A. I didn't say anything of the kind.

Q. Well, now, what did you say about participating in discussions? A. I said we participated in all the discussions, but all the paper work was left to Marcus—to Marcus, and his attorney, and Mr. Lieberman.

Q. And you reached certain agreements with Mr. Marcus, (101) told them to your attorney, he, or somebody, reduced them to writing, on September 14, '48. You didn't bother reading those writings, because you relied upon your attorney, is that correct? A. That's correct.

• • •

(commencing at 129-10)

Q. So that as soon as you, Mr. Bierman and Mr. Kevelson felt that you were in control, you immediately superseded, or replaced the lease of September 14, '48, DM-10, by a new lease. A. That was an agreement between ourselves—

Q. Yes. A. —that this new lease would go in effect only when Mr. Marcus is paid off in full, we would hold it as an agreement. But not till this lease was paid off, and all the obligations were paid off, would we use any part of the new lease.

• • •

Excerpts from Deposition of Robert J. Schwartz on Oral Examination

(Hearing of May 11, 1954)

(commencing at 23-7)

A. Mr. Marcus called me on the phone approximately the first week in September, 1948, and he said, "I have got a chance to sell," —strike that. He called me and he said, "What would you say if I told you that there is a buyer for the Riviera?"

And I said, "It all depends on the price or what you can get out of it."

• • •

(commencing at 40-10)

Q. And on the original you are sure the date is 1948 also? A. Well, if it's on a carbon, it must have been on the original.

Q. When did you first notice that it said 1948 on Exhibit DM-229? A. Oh, I guess about a year ago or so.

• • •

(commencing at 43-15)

Q. To whom did you actually deliver the file? A. I'm not absolutely sure, but, well, I'm pretty sure it was Mr. Marcus.

Q. And about how long ago? A. Oh, several years ago; at least three or four.

Q. Did you deliver all the papers that were in the file to him at that time? A. Actually the entire file. He took the complete file.

• • •

(commencing at 92-17)

Q. Well, you are sure that you turned over these certificates for 125 shares of stock to Mr. Marcus; what occasion was there for you to search for them among

Excerpts from Deposition of Robert J. Schwartz on Oral Examination

your possessions? A. He insisted he didn't have it so therefore I went back and went through my file, and still couldn't find it.

Q. When you turned over the stock to Mr. Marcus did you turn them over to him personally? A. I may have given it to his secretary, he may not have been there.

• • •

(commencing at 93-6)

A. Well when I was served with a subpoena duces tecum sometime last winter I went through my file to see if I could locate any papers at all, and I found nothing except what I have told you about.

• • •

(commencing at 146-1)

"Q. Now you are getting fresh, that is why I am shouting at you. A. I am not getting fresh. You don't understand plain English. I answered your question. I didn't say anything about the stock. If you ask the stenographer to read the answer you will save yourself a lot of high blood pressure.

"Mr. Topper: This is off the record. I think you better go up to see Judge Modarelli.

"Mr. Grosman: Wait a minute.

"Q. Now, I want to warn the witness— A. Don't warn me about anything, you just ask your questions and refrain from warning me about anything. In your position I think you would be pretty embarrassed to warn anybody about anything.

"Mr. Grosman: I want the record to show I am warning the witness that he is being fresh and refusing to answer, and if he persists—

• • •

Excerpts from Deposition of Robert J. Schwartz on Oral Examination

(commencing at 149-13)

Mr. Grosman: I didn't interrupt him, your Honor. So I told him if he persisted we would have to come in here and consult your Honor. With that he flared up, got off the stand, grabbed his coat, and said, "Let's go in and see the Judge now."

Now, obviously we can't continue this. He is a witness, that's all he is.

The Witness: As long as you shout at me, Mr. Grosman I will not continue. You will behave yourself and act as a gentleman.

Mr. Tepper: That is how it is.

The Witness: That's right. You have no right to shout at me.

• • •

(commencing at 156-5)

Mr. Grosman: If your Honor please, I don't see why there should be any exception in this case, why the ordinary rules of procedure should not be followed. As far as I am concerned, this man is a hostile witness hostile to Mr. Marcus, he has been playing with the other side quite obviously, he knows all about their exhibits, he calls for exhibits, and they hand them to him. As far as we are concerned he might just as well sit at counsel table with them. Now, the rules provide that this examination be conducted in this manner, and I don't know why your vacation should be broken up—

• • •

(commencing at 160-17)

Now, it is true this thing has been going on for almost four years but they are the ones who have been having a field day with this thing. You remember I

Excerpts from Deposition of Robert J. Schwartz on Oral Examination

came in here, I think it was a year ago, and I asked your Honor, "Stop the examination of Mr. Marcus." And they objected very strenuously. And your Honor then said, "Why, you only took 400 pages of testimony, you come in here after 4,000 pages have been taken." Now, we haven't had a chance to examine a witness.

The Court: What is that, implied criticism of me, (161) now?

Mr. Grosman: No, no, I am not criticizing you.

The Court: I thought everybody was out of step but you.

Mr. Grosman: I am not criticizing your Honor but I am telling what happened at that point. Now all of a sudden they are in an awful rush because this thing has been reduced to cash.

• • •

(commencing at 162-9)

Mr. Grosman: Now, if your Honor please, we had this all set down to be worked out consecutively and they stopped it. I don't remember now why they stopped it, but they stopped it. Now, I am perfectly satisfied to go on with this case consecutively, but I don't think that we ought to go on during the heat of the summer, and I don't think I ought to be required to drop everything else because it suits their convenience now. I have been ready for four years with this case.

Now, may I suggest that the matter be set down for 30 days consecutively in September. I don't care how many days it takes.

When they say that we are stalling, we didn't bring this action, they brought this action. They are the ones who tied up the fund.

The Court: They tied up the fund, but I will tell you right now, I bet the plaintiff regrets he ever filed an (163) interpleader.

Excerpts from Deposition of Robert J. Schwartz on Oral Examination

Mr. Grosman: That is something else. Don't let them say we tied this thing up when they came in here pleading for your Honor to protect—

• • •

(commencing at 163-18)

Mr. Schwartz certainly has to be considered. Here is a man who has no interest in the outcome of this litigation at all; he is a member of the bar and he has to make his living as a lawyer. Do you expect this man just to come jackassing from New York constantly because he unfortunately represented Mr. Marcus at one time? And I use the word "unfortunately" advisedly. I think that he has a perfect right to ask that you get through with him as soon as possible.

• • •

(commencing at 166-19)

Mr. Grosman: No, I don't suppose he does.

The Court: He certainly doesn't. I bet he regrets the day he ever represented Mr. Marcus; he wouldn't be here now.

The Witness: That's right.

Mr. Grosman: Well, it hasn't been at any loss, I don't imagine.

The Court: Well, I hope it won't be to yourself. (167) if you ever get through with it. If you do. Are you ready tomorrow?

• • •

(commencing at 167-20)

Mr. Tepper: But we have to read the transcripts which are coming in now dealing with direct examination. This is an important matter. They are the ones who conducted lengthy direct examinations, not we; they are the ones who instituted the interpleader suit,

Excerpts from Deposition of Robert J. Schwartz on Oral Examination

not we. They are the ones who had dealings with Mr. Schwartz, and partially as a (168) principal—he was a principal. He isn't only in this matter due to circumstances; the circumstances, having represented Mr. Marcus; he was a principal, he owned stock in this corporation, he had a stake in it. He has a stake in it now. It isn't exactly as it appears on the record.

The Witness: That is not true.

Mr. Tepper: So I say to your Honor we merely want an opportunity to carefully examine the record.

I agree that this pretrial has gotten out of hand, but not due to cross-examination because we haven't cross-examined anybody yet.

The Court: You haven't started?

Mr. Tepper: We haven't started. So why should we be charged with all of this delay?

Now, if your Honor wants to fix Thursday morning to examine this witness, and continue with him until we have completed his cross-examination, I think that would be fair and reasonable and just. Thereafter to fix some future dates so that we may have an opportunity to examine the entire transcript before cross-examination.

The Court: You will need it before you start.

* * *

(commencing at 189-22)

Q. Now, Mr. Schwartz, would you please try to fix the date of this conference between you and Mr. Miller at his hotel, the Saint Regis Hotel—the Saint Moritz, rather? I am sorry. A. Some time around December (190) or right about New Years' of the period preceding the purchase of the Riviera.

* * *

(commencing at 380-7)

Q. Did you say to Mr. Marcus on that same occasion,

Excerpts from Deposition of Robert J. Schwartz on Oral Examination

"Roth has no standing in the case. Your lawyers are over in Jersey." A. Possibly. I don't know. I think was my point of doubt, whether Roth was authorized to get the papers here. He had exhibited nothing to me, nor said that he had any authority to get them.

Q. Did you ask him for any such authorization? A. I think I said to Roth, "Is there any reason why the attorneys in Jersey don't request the papers. They are the ones in the litigation."

Q. Did Sam Marcus then say to you, "I am telling you Mr. Roth is my attorney here in New York?" A. Could be.

* * *

(commencing at 381-1)

Q. You then said to him, "Roth has no standing in this case." A. I don't know whether I repeated it. My point was, I wanted to hand them over to somebody in litigation if possible.

Q. You wanted to hand over what to somebody in litigation? A. Whatever papers they thought I had.

Q. Well, did you have some papers? A. I didn't think that those two receipts for dealings between Mr. Marcus and myself were part of the case at all.

Q. You are now referring to Exhibits DM-229 and Exhibit DM-228? A. That is right.

* * *

(commencing at 382-4)

Q. Now, you recall whether or not, Mr. Schwartz, you showed Exhibit DM-229 to Mr. Brigadier on any one of several times when he came over to see you? A. You will have to be more specific. I did show it to him subsequently when the examination started.

Q. Not before? A. Not before.

* * *

Excerpts from Deposition of Al Kevelson on Oral Examination

Page 8:

Q. Did you make up your mind then and there as to whether you would buy it or not? A. I left with the accountants and I told Mr. Miller that I will call him later, which I did, and I told him that I am ready to do business.

Q. Now, how much later did you call him? A. I don't remember. Maybe that same evening, or the next morning. I don't remember exactly.

Page 11:

Q. So you personally had no dealings with him whatsoever, except as you came in contact with him at these night clubs? A. You mean business dealings?

Q. Yes. A. No, no business dealings.

Page 39:

Q. You knew he was a living human being who had an interest in this Milmar Estates; you knew that? A. Yes.

Page 63:

Q. Did you have any interest in the corporation known as Bill Miller's Riviera? A. No, sir.

Pages 9-10:

Q. And do you have a lawyer representing you generally in your business? A. Most of the times.

Q. And who is he? A. We have Harvey Simon in New York City, and Chazin and Chazin in Jersey City.

Q. Now, did you talk to either one of these firms— A. About what?

Q. —with respect to your proposed purchase of one half interest in Milmar Estates? A. No, sir.

Excerpts from Deposition of Al Kevelson on Oral Examination

Page 79:

A. Well, I didn't think I needed a lawyer. I had confidence in William Miller.

Page 68:

Q. Well, were you fully informed of exactly what was going on with the affairs of Milmar Estates, Inc.? A. That's right.

Q. From the time that you took over, as you described here? A. That's correct.

Q. You at all times have been fully informed of the affairs of Milmar Estates, *Inc.*? A. That's correct.

Page 43:

Q. How much money did Bill Miller put up in connection with the purchase of this stock, Marcus' stock, on September 14, 1948 any? A. Mr. Miller didn't put any money up.

Q. Only you and Mr. Bierman. A. That's correct.

Page 44:

Q. In reference to the $15,000, did he put up any money? A. He was paying—I imagine he was paying. It was his duty to pay it.

Q. You didn't advance him any money on account of the $15,000? A. No, sir.

Page 45:

Q. Didn't the $15,000 additional come from the treasury of the Milmar Estates, Inc., after you and Mr. Miller and Mr. Bierman took over? A. I don't know where it came from. And if it did, it would be charged to Mr. Miller's account.

Excerpts from Deposition of Samuel Marcus on Oral Examination

Page 71:

Q. Incidently, why weren't you a party to that contract? It was your money that was being spent to buy Marcus' interest. A. No particular reason. I just didn't want to be named in it. I didn't want anybody—I told them to act as my agent and they went.

Page 75:

Q. Well, did Bierman put any of his own money or was it your money that he put up? A. You mean with the deposit?

Q. *Yes.* A. *I don't* remember exactly whether it was his or whether it was mine.

Q. Well, an item like $10,000, you wouldn't remember whether it was your money or his money that was put up? A. Well, I gave Bill Miller the money. Whether he gave it to Bierman, or what he did with it, I don't know what he did, but most likely he must have given it to Bierman.

Excerpts from Deposition of Samuel Marcus on Oral Examination

(commencing at 57-8)

Q. Did you protest to the lawyers that this agreement did not carry out your intent? A. Frankly, I don't recall ever see the agreement after I left my lawyer's office. I had no copy myself.

• • •

(commencing at 80-7)

Q. Well, what do you say was the transaction which this agreement was intended to cover? A. I personally was to sell my holdings of 625 shares of stock to a gentle-

Excerpts from Deposition of Samuel Marcus on Oral Examination

man by the name of Mr. Al Kevelson, or his nominees, whoever might appear for him.

Q. For what price? A. For $125,000, plus an additional amount which was later added.

• • •

(commencing at 84-5)

Q. What were those papers? A. I don't know what they were. I just gave my attorney the sheaf of papers that I had gotten from Mr. Schwartz's office, and I didn't know what was in it.

Q. Did those papers include a copy of Exhibit P-4? A. I really don't know. I didn't go through the file. I simply turned the file over completely as I got it from Mr. Schwartz's office.

• • •

(commencing at 89-8)

A. I have never seen a copy of this agreement since the time it was signed in Mr. Schwartz's office.

Q. Did Mr. Schwartz give you a copy of this agreement? A. He did not.

Q. Did he give you a copy of this agreement among the papers that you turned over to Judge Grosman? A. I wouldn't know.

• • •

(commencing at 94-8)

Q. Now, your wife, Sarah Marcus, never signed that deed, did she? A. I don't think she did.

Q. You know that a suit was brought by Milmar Estates, Inc., against your wife with reference to an alleged dower interest in that property? A. That's correct.

Q. And you know that that suit was settled by the payment of money to your wife? A. So I understand.

• • •

Excerpts from Deposition of Samuel Marcus on Oral Examination

(commencing at 133-5)

Q. What additional sources are there where you might have papers? A. Well, we have a warehouse down on Duane Street which is quite loaded up there, and it took us days to move things around to locate those things, and I have been waiting for my secretary to get well, that is my ex-secretary to get well, so that she can come into town and help me to possibly locate something in my files.

• • •

(commencing at 149-13)

Q. Now, what conversation took place between you and Al Kevelson at that time? A. I said to Mr. Kevelson that I understand—"I have heard rumors that you are no longer connected with the Riviera. Is that correct?"

And he said, "Why, no, that is not correct at all. I am still actively engaged there. Those rumors are entirely incorrect."

• • •

(commencing at 155-8)

Q. Will you tell us what the conversations were. A. Well, one conversation particularly, Mr. Miller wanted me to release his note for $50,000, he wanted me to give him back his note for $50,000, and I did not want to give him back his note for $50,000.

He says, "well, Mr. Kevelson, Al, won't go through with this deal unless you return this note to me. He knows about this note that you hold of mine and he does not want anybody in any position to press me for money, and unless I can get a release of this note it may dump the applecart."

He said, "What difference does it make to you? You have the stock. You own the stock. What difference does it make to you if you give me the note back and destroy the note?"

• • •

Excerpts from Deposition of Samuel Marcus on Oral Examination

(commencing at 156-21)

And I told him that, frankly, I do not like the looks of it, that I feel I was being taken for a ride, that I was not getting for my shares of stock what I was entitled to. And he called Bill Miller over. He said, "Well, put Bill Miller back again." Bill Miller went back on the phone, and (157) when he came back he said to me, "Well, I will tell you, Sam, here is what we agreed to do. I will give you an extra $15,000 to sweeten up the deal." And with the extra $15,000 I agreed to sell my stock for the amount of $140,000.

• • •

(commencing at 162-22)

A. Well, the deal was, he said, "Bill can get you $125,000 for your stock. Now, why don't you take it," he said; "Maybe we can do a little bit better, but at least take this deposit now so that I can go back to (163) this guy and tell him we got a deal finished."

Mr. Grosman: Would you ask him who the "guy" is.

• • •

(commencing at 164-2)

Q. Now, that contemplated the selling of your stock in Milmar Estates, Inc.? A. That contemplated selling 625 shares of stock that was issued in my name.

Q. How about the rest of the stock? A. The rest of the stock was being held for a $50,000 note.

• • •

(commencing at 188-2)

Q. Did you ever knowingly sign a resignation as officer and director of Milmar Estates, Inc.? A. I don't recall ever knowingly signing such resignation.

• • •

Excerpts from Deposition of Samuel Marcus on Oral Examination

(commencing at 218-14)

The Witness: It is from its inception I believe. I see the first date May 7, 1946. I never had this checkbook in my possession. I mean I never handled this book at all. It was merely left in the office by Mr. Hoffman.

Mr. Grosman: What is the last date?

The Witness: May 16, 1947.

* * *

(commencing at 227-11)

Do you know that Milmar Estates, Inc. paid your wife, Sara Marcus, $7500? A. I heard about it.

Q. Did you know about an action that was pending by Milmar Estates, Inc. against your wife prior to the time that that money was paid? A. I had heard about it.

Q. Did you prior to the time the money was paid know anything about the negotiations pending in settling that suit? A. I did not.

Q. Did you know that an offer or offers had been made by Milmar Estates, Inc. to pay money to your wife? A. I did not.

Q. You knew nothing about such an offer or offers until after the money was paid? A. That's correct.

* * *

(commencing at 303-7)

Q. By the way, have you set up any account in any of your books showing a balance unpaid on sale of stock of Milmar Estates by you, showing payments as they are received and showing balances unpaid? A. No, I did not.

Q. Do you have any amount set up at all in your books for the balance of the purchase price of the stock sold by you on September 14, 1948? A. I handled this transaction as a personal matter.

* * *

Excerpts from Deposition of Samuel Marcus on Oral Examination

(commencing at 305-10)

Q. What instructions had you given her as to how these checks should be entered in your checkbook? A. I don't recall ever giving her any instructions. It is something that she had always done on her own to be able to supply me with whatever information I wanted when required.

• • •

(commencing at 309-5)

The Witness: I am not prepared to make a definite statement as to the exact purpose of this money received from Miller. I do know there was arrangements made where I was to be repaid some loans that I had advanced to the Riviera, and unless I can see the books of the Riviera and Milmar I cannot make an intelligent answer to your question.

• • •

(commencing at 342-24)

A. • • • and I also gave him at that time as additional collateral some stock I owned in another (343) company called the Weimet Co. • • •

• • •

(commencing at 403-2)

Q. Do you know that in the dower case your wife in answer to an interrogatory said that she was displeased with your connection with night clubs? A. I don't know what she said at all.

• • •

(commencing at 403-9)

Q. Was your interest in it merely as a real estate proposition? A. That's right.

• • •

Excerpts from Deposition of Samuel Marcus on Oral Examination

(commencing at 403-17)

Q. And not with the purpose of operating any club? A. That's right.

• • •

Exhibit DME-57

[Check Stubs]

(Opposite) ☛

DM 57

NO. 7/10 19 ORDER OF

Lum Reeves
Pet Cow
Beer Woodin Motor 7 Feb 2 cm
7 Mar 2 cm
5000 —

NO. 9/3 19 ORDER OF

Michael Realty Corp
room Rampe 79 Ind.
5791 67

NO. 9/3 19 ORDER OF

Michael Realty Corp
5775 00
13 072 46

DM 59

NO. 9/7 19 ORDER OF

Bros of H Lee
Melva Dax - Pearl
59 30

NO. 9/7 19 ORDER OF

Bros of H Lee
Block 153 1947 Jan
Lot 36 + ind.
5711 21

NO. 9/7 19 ORDER OF

Bros of H Lee
Map 186
Lot 11 Jan
772 66
9613 63